

F I N A L R E P O R T

SENTENCING SUBCOMMITTEE

January, 1982

The Legislative Council approved the creation of the Sentencing Subcommittee of the Senate Standing Committee on Judiciary and the House Standing Committee on Judiciary and Law Enforcement which is composed of ten members. The Subcommittee consists of the following members:

Senator Richard Ramsey, Co-chairperson
Representative Walter Conlon, Co-chairperson
Senator Gary L. Baugher
Senator C. Joseph Coleman
Senator Donald V. Doyle
Senator John S. Murray
Representative Virgil E. Corey
Representative Daniel Jay
Representative Roger Halvorson
Representative Thomas Swartz

At the Subcommittee's first meeting, held on September 22, 1981, the Subcommittee received the presentations of:

1. Mr. Dan Johnston, representing the Iowa County Attorneys Association, concerning the legislative proposals of that association.
2. Mr. John Roehvick, representing the Iowa Trial Lawyers Association, concerning observations about and proposed changes for the Iowa sentencing structure.
3. Mr. Paul C. Hoeffy, past president of the Iowa Association of Chiefs of Police and Police Officers, concerning a legislative proposal as to good and honor time being applied to reduce a mandatory minimum sentence.
4. Lieutenant Kayne B. Robinson of the Des Moines Police Department, concerning ten legislative proposals.
5. Ms. Bea Merritt and Mr. James Peterson, representing the Iowa Corrections Association, concerning examining the impact of changes in the Iowa sentencing scheme before extensive changes are made.

6. The Honorable Joel D. Novak, Judge of the Fifth Judicial District, who appeared before the Subcommittee to respond to Subcommittee questions on sentencing practices.

7. Mr. Hal Ferrier, Director of the Division of Corrections of the Department of Social Services, concerning what the impact of the changing of parole and the elimination of good and honor time would have on the state's penal institutions.

8. Mr. Henry Pontius, President of Seniors United for Action, concerning crime perpetrated on the elderly.

At the second and final meeting held on November 19, 1981, testimony was received from the following persons:

1. Justice Mark McCormick, Chairman of the Iowa Judges Association's Criminal Laws Committee, concerning the problems associated with indeterminate and determinate sentencing systems.

2. Ms. Bea Merritt, representing the Iowa Corrections Association, concerning the Association's resolutions advocating certain legislative proposals.

3. Mr. Patrick Grady, representing the Public Defenders Association, concerning the Association's position on certain legislative proposals.

As a result of the testimony given and Subcommittee deliberation, the Subcommittee has recommended a number of proposed bill drafts which are attached to this report. The following is a listing of those drafts:

1. A draft to increase the penalty for attempted murder.

2. A draft to increase the penalty for murder in the second degree.

3. A draft providing for a system of restitution by public offenders.

4. A draft providing for the plea or verdict of guilty but mentally ill.

5. A draft providing for the charging of a fee for filing a criminal indictment or information.

In addition to the bills approved by the Subcommittee, the Subcommittee, through its amended Subcommittee rules, approved three bills as a "minority" report. This minority report consists of bills which received a majority vote by the Subcommittee membership of one house but not the other. A listing of those bills are as follows:

1. (Proposed House Judiciary and Law Enforcement Bill)

A draft relating to determinate sentencing, good and honor time, the functions of the parole board, inmate labor, juvenile offense record in a presentence investigation report, and sentencing guidelines.

2. (Proposed House Judiciary and Law Enforcement Bill)

A draft to prohibit the use of deferred judgments, deferred sentences, or sentences for the offense of operating a motor vehicle in violation of section 321.281.

3. (Proposed Senate Judiciary Committee Bill)

A draft to compensate innocent victims of criminal acts.

The minutes of the Subcommittee meetings, written testimony presented to the Subcommittee, and other supportive materials are on file with the Legislative Service Bureau.

PROPOSED HOUSE/SENATE FILE _____

BY (PROPOSED JUDICIARY COMMITTEE)
BILL AND JUDICIARY AND LAW
ENFORCEMENT BILL BY THE
SENTENCING JOINT SUBCOMMITTEE

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the penalty for murder in the second degree.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 707.3, unnumbered paragraph 2, Code
2 1981, is amended to read as follows:

3 Murder in the second degree is a class "B" felony. However,
4 notwithstanding section 902.9, subsection 2, the maximum
5 sentence for a person convicted under this section shall be
6 a period of confinement from twenty-five years to ninety-nine
7 years which maximum sentence is to be determined by the
8 sentencing court based on the facts and circumstances of the
9 particular case.

10 Sec. 2. Section 902.3, Code 1981, is amended to read as
11 follows:

12 902.3 INDETERMINATE SENTENCE. When a judgment of
13 conviction of a felony, other than a class "A" felony is
14 entered against any person, the court, in imposing a sentence
15 of confinement, shall commit the person into the custody of
16 the director of the division of adult corrections for an
17 indeterminate term, the maximum length of which shall not
18 exceed the limits as fixed by section 902.9 or section 707.3
19 nor shall the term be less than the minimum term imposed by
20 law, if a minimum sentence is provided.

21 EXPLANATION

22 This bill changes the maximum sentence for the offense
23 of murder in the second degree. Presently the maximum sentence
24 is confinement for no more than twenty-five years. The bill
25 grants the sentencing court the authority to set the maximum
26 sentence for the offense from twenty-five years to a sentence
27 of ninety-nine years depending on the facts and circumstances
28 in each particular case.

29 The bill would take effect July 1 following its enactment.

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PROPOSED HOUSE/SENATE FILE _____

BY (PROPOSED SENATE JUDICIARY
COMMITTEE AND HOUSE JUDICIARY
AND LAW ENFORCEMENT COMMITTEE
BILL BY THE JOINT SENTENCING
SUBCOMMITTEE)

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to restitution by public offenders.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Sections 2 through 10 of this Act shall be
2 enacted as a new chapter of the Code.

3 Sec. 2. NEW SECTION. DEFINITIONS. As used in this
4 chapter, unless the context otherwise requires:

5 1. "Victim" means any person who has suffered pecuniary
6 damages as a result of the offender's criminal activities.
7 However, for purposes of this chapter, an insurer is not a
8 victim and does not have a right of subrogation.

9 2. "Pecuniary damages" means all damages to the extent
10 not paid by an insurer, which a victim could recover against
11 the offender in a civil action arising out of the same facts
12 or event, except punitive damages and damages for pain,
13 suffering, mental anguish, and loss of consortium. Without
14 limitation, "pecuniary damages" includes damages for wrongful
15 death.

16 3. "Criminal activities" means any crime for which there
17 is a plea of guilty, verdict of guilty, or special verdict
18 upon which a judgment of conviction is rendered and any other
19 crime committed after July 1, 1982 which is admitted or not
20 contested by the offender, whether or not prosecuted. However,
21 "criminal activities" does not include simple misdemeanors
22 under chapter 321.

23 4. "Restitution" means payment of pecuniary damages to
24 a victim including damages for wrongful death. Restitution
25 shall also include the payment of court costs, court-appointed
26 attorney's fees or the expense of a public defender, and the
27 performance of a public service by an offender in an amount
28 set by the court when no victim has suffered pecuniary damages
29 and the offender cannot reasonably pay all or part of the
30 court costs, court-appointed attorney's fees or the expense
31 of a public defender.

32 Sec. 3. NEW SECTION. RESTITUTION ORDERED BY SENTENCING
33 COURT. In all criminal cases except simple misdemeanors under
34 chapter 321, in which there is a plea of guilty, verdict of
35 guilty, or special verdict upon which a judgment of conviction

1 is rendered, the sentencing court shall order that restitution
2 be made by each offender to the victims of his or her criminal
3 activities and, to the extent that the offender is reasonably
4 able to do so, to the county where conviction was rendered
5 for court costs, court-appointed attorney's fees or the expense
6 of a public defender when applicable. However, victims shall
7 be paid in full before restitution payments are paid to the
8 county for court costs, court-appointed attorney's fees or
9 for the expense of a public defender. When no victim has
10 suffered pecuniary damages and the offender is not reasonably
11 able to pay all or a part of the court costs, court-appointed
12 attorney's fees or the expense of a public defender, the court
13 may require the offender to perform a needed public service
14 for any governmental agency or for a private, nonprofit agency
15 which provides a service to the youth, elderly or poor of
16 the community. When community service is ordered, the court
17 shall set a specific number of hours of service to be performed
18 by the offender. The judicial district department of
19 correctional services shall provide for the assignment of
20 the offender to a public agency or private nonprofit agency
21 to perform the required service.

22 Sec. 4. NEW SECTION. DETERMINATION OF AMOUNT OF
23 RESTITUTION. The court shall require the county attorney
24 to promptly prepare a statement of pecuniary damages to victims
25 of the defendant and shall require the clerk of court to
26 prepare a statement of court-appointed attorney's fees, the
27 expense of a public defender and court costs and the same
28 shall be promptly provided to the presentence investigator.
29 These statements shall become a part of the presentence report.
30 If a defendant believes no person suffered pecuniary damages,
31 the defendant shall so state. If the defendant has any mental
32 or physical impairment which would limit or prohibit the
33 performance of a public service, the defendant shall so state.
34 The court may order a mental or physical examination of the
35 defendant or both, to determine a proper course of action.

1 At the time of sentencing, the court shall set out the amount
2 of restitution including the amount of public service to be
3 performed as restitution and the persons to whom restitution
4 must be paid. This shall be known as the plan of restitution.

5 Sec. 5. NEW SECTION. CONDITION OF PROBATION--PAYMENT
6 PLAN. When restitution is ordered by the sentencing court
7 and the offender is placed on probation, restitution shall
8 be a condition of probation. Failure of the offender to
9 comply with the plan of restitution, plan of payment, or
10 community service requirements when community service is
11 ordered by the court as restitution, shall constitute a
12 violation of probation and shall constitute contempt of court.
13 The court may hold the offender in contempt, revoke probation,
14 or may extend the period of probation in such circumstances.
15 However, if the period of probation is extended it shall not
16 be for more than the maximum period of probation for the
17 offense committed as provided in section 907.7.

18 If an offender's probation is revoked, his or her assigned
19 probation officer shall forward to the director of the division
20 of adult corrections, information concerning the offender's
21 restitution plan, restitution plan of payment, the restitution
22 payment balance, and any other pertinent information concerning
23 or affecting restitution by the offender.

24 When the offender is committed by the court to be supervised
25 by a judicial district department of correctional services,
26 is committed to a county jail, or to an alternate facility,
27 the receiving agent or agency or county sheriff shall prepare
28 a restitution plan of payment taking into consideration the
29 offender's income, physical and mental health, age, education,
30 employment and family circumstances. The agent, agency, or
31 county sheriff shall review the plan of restitution ordered
32 by the court, and shall submit a restitution plan of payment
33 to the sentencing court. When community service is ordered
34 by the court as restitution, the restitution plan of payment
35 shall set out a plan to meet the requirement for the community

1 service. The court may approve or modify the plan of
2 restitution and restitution plan of payment. When there is
3 a significant change in the offender's income or circumstances,
4 the agent, agency or county sheriff which has supervision
5 of the plan of payment shall submit a modified restitution
6 plan of payment to the court. When there is a transfer of
7 supervision from one agent, agency or county sheriff to
8 another, the sending agent, agency, or county sheriff shall
9 forward to the receiving agent, agency, or county sheriff,
10 all necessary information regarding the balance owed against
11 the original amount of restitution ordered and the balance
12 of public service required. When the offender's circumstances
13 and income have significantly changed, the receiving agent,
14 agency, or county sheriff shall submit a new plan of payment
15 to the sentencing court for approval or modification based
16 on the considerations enumerated in this section.

17 Sec. 6. NEW SECTION. CONDITION OF WORK RELEASE OR PAROLE.

18 1. When an offender is committed to the custody of the
19 director of the division of adult corrections pursuant to
20 a sentence of confinement, the sentencing court shall forward
21 to the director, a copy of the offender's restitution plan,
22 present restitution payment plan if any, and other pertinent
23 information concerning or affecting restitution by the
24 offender. However, if the offender is committed to the custody
25 of the director after revocation of probation, this information
26 shall be forwarded by the offender's probation officer.

27 An offender committed to a penal or correctional facility
28 of the state, shall make restitution while placed in that
29 facility. Upon commitment to the custody of the director
30 of the division of corrections, the director or the director's
31 designee shall prepare a restitution plan of payment or modify
32 any existing plan of payment. The new or modified plan of
33 payment shall reflect the offender's present facts and
34 circumstances concerning the offender's income, physical and
35 mental health, education, employment, and family circumstances.

1 The director or the director's designee may modify the plan
2 of payment at any time to reflect the offender's present facts
3 and circumstances.

4 2. If an offender is to be placed on work release from
5 an institution under the control of the director of the
6 division of adult corrections, restitution shall be a condition
7 of work release. The chief of the bureau of community
8 correctional services of the division of adult corrections,
9 shall prepare a restitution plan of payment or may modify
10 any previously existing restitution plan of payment. The
11 new or modified plan of payment shall reflect the offender's
12 present facts and circumstances concerning the offender's
13 income, physical and mental health, education, employment,
14 and family circumstances. The bureau chief may modify the
15 plan of payment at anytime to reflect the offender's present
16 facts and circumstances. Failure of the offender to comply
17 with the restitution plan of payment, including the community
18 service requirement, if any, shall constitute a violation
19 of a condition of work release and the work release privilege
20 may be revoked.

21 3. If an offender is to be placed on work release from
22 a facility under control of a county sheriff, restitution
23 shall be a condition of work release. The sheriff shall
24 prepare a restitution plan of payment or may modify any
25 previously existing restitution plan of payment. The new
26 or modified plan of payment shall reflect the offender's
27 present facts and circumstances concerning the offender's
28 income, physical and mental health, education, employment
29 and family circumstances. Failure of the offender to comply
30 with the restitution plan of payment including the community
31 service requirement, if any, shall constitute a violation
32 of a condition of work release. The county sheriff may modify
33 the plan of restitution at any time to reflect the offender's
34 present facts and circumstances.

35 4. If an offender is to be placed on parole, restitution

1 shall be a condition of parole. The parole office to which
2 the offender will be assigned shall prepare a restitution
3 plan of payment or may modify any previously existing
4 restitution plan of payment. The new or modified plan of
5 payment shall reflect the offender's present facts and
6 circumstances concerning the offender's income, physical and
7 mental health, education, employment, and family circumstances.
8 Failure of the offender to comply with the restitution plan
9 of payment including a community service requirement, if any,
10 shall constitute a violation of a condition of parole. The
11 parole officer may modify the plan of payment any time to
12 reflect the offender's present facts and circumstances. A
13 restitution plan of payment or modified plan of payment,
14 prepared by a parole officer, must meet the approval of the
15 chief of the bureau of community correctional services of
16 the division of adult corrections.

17 5. The director of the division of adult corrections shall
18 promulgate rules pursuant to chapter 17A concerning the
19 policies and procedures to be used in preparing and
20 implementing restitution plans of payment for offenders who
21 are committed to an institution under the control of the
22 director of the division of adult corrections, for offenders
23 who are to be released on work release from institutions under
24 the control of the director of the division of adult
25 corrections, for offenders who are placed on probation, and
26 for offenders who are released on parole.

27 Sec. 7. NEW SECTION. PAYMENT PLAN--COPY TO VICTIMS.
28 Each agent, agency, or county sheriff preparing a restitution
29 plan of payment or modified restitution plan of payment shall
30 forward, when it is approved by the court if approval is
31 required under section 5 of this Act, or when the plan is
32 completed if court approval under section 5 of this Act is
33 not required, a copy to the clerk of court in the county in
34 which the offender was sentenced. The clerk of court shall
35 forward a copy of the plan of payment or modified plan of

1 payment to the victim or victims.

2 Sec. 8. NEW SECTION. PETITION FOR HEARING. At any time
3 during the period of probation, parole or incarceration, the
4 offender or the agent, agency or county sheriff who prepared
5 the offender's restitution plan, may petition the court and
6 the court shall grant a hearing on any matter related to the
7 plan of restitution or restitution plan of payment. The court
8 at any time prior to the expiration of the offender's sentence,
9 may modify the plan of restitution or the restitution plan
10 of payment, or both, and may extend the period of time for
11 the completion of restitution.

12 Sec. 9. NEW SECTION. CIVIL LIABILITY. This chapter and
13 proceedings under this chapter shall not limit or impair the
14 rights of victims to sue and recover damages from the offender
15 in a civil action. However, any restitution payment by the
16 offender to a victim shall be set off against any judgment
17 in favor of the victim in a civil action arising out of the
18 same facts or event.

19 Sec. 10. NEW SECTION. COLLECTION OF PAYMENTS--PAYMENT
20 BY CLERK OF COURT. An offender making restitution pursuant
21 to a restitution plan of payment shall make the payment monthly
22 to the clerk of court of the county from which the offender
23 was sentenced, unless the restitution plan of payment provides
24 otherwise.

25 The clerk of court shall maintain a record of all receipts
26 and disbursements of restitution payments and shall disburse
27 all moneys received to the victims designated in the plan
28 of restitution. If there is more than one victim,
29 disbursements to the victims shall be on the basis of the
30 victim's percentage of the total owed by the offender to all
31 victims.

32 Court costs, court-appointed attorney's fees, and expenses
33 for public defenders, shall not be withheld by the clerk of
34 court until all victims have been paid in full. Payments
35 to victims shall be made by the clerk of court at least

1 monthly. Payments by a clerk of court shall be made no later
2 than the last business day of the month, but may be made more
3 often at the discretion of the clerk of court. The clerk
4 of court receiving final payment from an offender, shall
5 notify all victims that full restitution has been made, and
6 a copy of the notice shall be sent to the sentencing court.
7 Each agent, agency, or county sheriff supervising an offender
8 who is required to perform community service as full or partial
9 restitution shall keep records to assure compliance with the
10 portions of the plan of restitution and restitution plan of
11 payment relating to community service and, when the offender
12 has complied fully with the community service requirement,
13 notify the sentencing court.

14 Sec. 11. Section 906.11, Code 1981, is amended to read
15 as follows:

16 906.11 ASSIGNMENT TO PAROLE OFFICER. A person released
17 on parole shall be assigned to a parole officer by the chief
18 parole officer. Both the person and his or her parole officer
19 shall be furnished with the conditions of his or her parole
20 including a copy of the plan of restitution and the restitution
21 plan of payment, if any, and the regulations which the person
22 will be required to observe, in writing. The parole officer
23 shall explain these conditions and regulations to the person,
24 and supervise, assist, and counsel the person during the term
25 of his or her parole.

26 Sec. 12. Section 907.8, unnumbered paragraph 1, Code 1981,
27 is amended to read as follows:

28 A person released on probation shall be assigned to a
29 probation officer. Both the person and his or her probation
30 officer shall be furnished with the conditions of the person's
31 probation including a copy of the plan of restitution and
32 the restitution plan of payment, if any, and the regulations
33 which the person will be required to observe, in writing.
34 The probation officer shall explain these conditions and
35 regulations to the person and shall supervise, assist, and

1 counsel the person during the term of his or her probation.

2 Sec. 13. Section 907.12, Code 1981, is repealed.

3 Sec. 14. This Act shall take effect July 1 following its
4 enactment and shall apply to persons sentenced after the
5 effective date of this Act.

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EXPLANATION

7 This bill would mandate restitution in all criminal cases
8 except simple misdemeanors under chapter 321. Restitution
9 would be for pecuniary damages suffered by the victims of
10 the offender's criminal activities, and to the extent that
11 the offender is reasonably able to do so to the county where
12 conviction was rendered for court costs, court appointed
13 attorney's fees or the expense of a public defender when
14 applicable.

15 When no victim has suffered pecuniary damages and the
16 offender is not reasonably able to pay all or part of court
17 costs, court appointed attorney's fees or the expense of a
18 public defender, the court may require the offender to perform
19 community service work.

20 At the time of sentencing, the court would order the amount
21 of restitution and the persons to whom restitution must be
22 paid. This order is known as the plan of restitution.
23 Restitution is mandatory while the offender is committed to
24 a penal or correctional facility of the state and is also
25 a condition of probation, work release and parole, with the
26 supervising authority at each of these stages preparing a
27 restitution plan of payment to implement the plan of
28 restitution. The plan of payment would reflect the offender's
29 present facts and circumstances (i.e. income, physical and
30 mental health, education, employment and family circumstances).

31 The bill would take effect July 1 following its enactment.

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PROPOSED HOUSE/SENATE FILE _____

BY (PREPARED BY THE LEGISLATIVE
SERVICE BUREAU FOR THE
SENTENCING JOINT SUBCOMMITTEE
FOR STUDY PURPOSES ONLY)
November, 1981

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to criminal responsibility for the commission of
2 a public offense while mentally ill.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 701.4, Code 1981, is amended to read
2 as follows:

3 701.4 ~~INSANITY~~MENTAL ILLNESS. No person shall be
4 convicted of any crime if at the time such crime is committed
5 the person suffers from such a diseased or deranged condition
6 of the mind so as to render the person incapable of knowing
7 the nature and quality of the act he or she is committing
8 or incapable of distinguishing between right and wrong in
9 relation to that act. Insanity need not exist for any specific
10 length of time before or after the commission of the alleged
11 criminal act.

12 A person who at the time of the commission of a public
13 offense was not insane but was suffering from a mental illness
14 as defined in section 2 of this Act, is not relieved of
15 criminal responsibility for his or her conduct and may be
16 found guilty but mentally ill. Mental illness is not an
17 affirmative defense, but an alternative plea or finding that
18 may be accepted, under appropriate evidence, when the defense
19 of insanity is raised or the plea of guilty but mentally ill
20 is made.

21 Sec. 2. Chapter 702, Code 1981, is amended by adding the
22 following new section:

23 NEW SECTION. MENTAL ILLNESS. The term "mental illness"
24 or "mentally ill" as it applies to a plea or verdict of guilty
25 but mentally ill, means a substantial disorder of thought,
26 mood, or behavior, which afflicted a person at the time of
27 the commission of a public offense and which impaired that
28 person's judgment but not to the extent that the person is
29 unable to appreciate the wrongfulness of his or her behavior
30 or is unable to conform his or her conduct to the requirements
31 of law.

32 Sec. 3. Section 813.2, rule of criminal procedure 8,
33 subsection 2, Code 1981, is amended to read as follows:

34 2. PLEAS TO THE INDICTMENT OR INFORMATION.

35 a. IN GENERAL. A defendant may plead guilty, guilty but

1 mentally ill, not guilty, or former conviction or acquittal.
2 If the defendant fails or refuses to plead at arraignment,
3 or if the court refuses to accept a guilty plea, the court
4 shall enter a plea of not guilty. At any time before judgment,
5 the court may permit a guilty plea to be withdrawn and a not
6 guilty plea substituted.

7 b. PLEAS OF GUILTY. The court may refuse to accept a
8 plea of guilty, and shall not accept such plea without first
9 addressing the defendant personally and determining that the
10 plea is made voluntarily and intelligently and has a factual
11 basis.

12 Before accepting a plea of guilty, the court must address
13 the defendant personally in open court and inform the defendant
14 of, and determine that the defendant understands, the
15 following:

16 (1) The nature of the charge to which the plea is offered.

17 (2) The mandatory minimum punishment, if any, and the
18 maximum possible punishment provided by the statute defining
19 the offense to which the plea is offered.

20 (3) That the defendant has the right to be tried by a
21 jury, and at such trial has the right to assistance of counsel,
22 the right to confront and cross-examine witnesses against
23 him or her, and the right not to be compelled to incriminate
24 himself or herself.

25 (4) That if the defendant pleads guilty there will not
26 be a further trial of any kind, so that by pleading guilty
27 the defendant waives the right to a trial.

28 c. PLEA OF GUILTY BUT MENTALLY ILL. Before or during
29 trial, a plea of guilty but mentally ill may be accepted by
30 the court when:

31 (1) The defendant has undergone an examination by a
32 clinical psychologist or psychiatrist and has waived his or
33 her right to trial; and

34 (2) The judge has examined the psychiatric or psychological
35 report or reports; and

1 (3) The judge has held a hearing at which either party
2 may present evidence on the issue of the defendant's mental
3 health, and at the conclusion of such hearing, is satisfied
4 that there is a factual basis that the defendant was mentally
5 ill at the time of the public offense to which the plea is
6 entered.

7 e d. INQUIRY REGARDING PLEA AGREEMENT. The court shall
8 also inquire as to whether the defendant's willingness to
9 plead guilty results from prior discussions between the
10 attorney for the state and the defendant or the defendant's
11 attorney. The terms of any plea agreement shall be disclosed
12 of record as provided in R.Cr.P.9(2).

13 d e. CHALLENGING PLEAS OF GUILTY. The court shall inform
14 the defendant that any challenges to a plea of guilty based
15 on alleged defects in the plea proceedings must be raised
16 in a motion in arrest of judgment and that failure to so raise
17 such challenges shall preclude the right to assert them on
18 appeal.

19 Sec. 4. Section 813.1, rule of criminal procedure 9,
20 subsection 3, Code 1981, is amended to read as follows:

21 3. ACCEPTANCE OF PLEA AGREEMENT. When the plea agreement
22 is conditioned upon the court's concurrence, and the court
23 accepts the plea agreement, the court shall inform the
24 defendant that it will embody in the judgment and sentence
25 the disposition provided for in the plea agreement or another
26 disposition more favorable to the defendant than that provided
27 for in the plea agreement. In that event, the court may
28 accept a waiver of the presentence investigation, the right
29 to file a motion in arrest of judgment, and time for entry
30 of judgment, and proceed to judgment. However, if the plea
31 agreement provides for the defendant to plead guilty but
32 mentally ill to a public offense, the court shall not accept
33 such a plea agreement or plea until the defendant has undergone
34 examination by a clinical psychologist or psychiatrist and
35 the judge has examined the psychiatric or psychological report

1 or reports, held a hearing on the issue of the defendant's
2 mental condition and is satisfied that there is a factual
3 basis that the defendant was mentally ill at the time of the
4 public offense to which the plea is offered.

5 Sec. 5. Section 813.2, rule of criminal procedure 10,
6 subsection 10, paragraph b, subparagraph (1), Code 1981, is
7 amended to read as follows:

8 (1) DEFENSE OF INSANITY AND DIMINISHED RESPONSIBILITY.

9 If a defendant intends to rely upon the defense of insanity
10 or diminished responsibility at the time of the alleged crime,
11 the defendant shall, within the time provided for the filing
12 of pretrial motions, file written notice of such intention.

13 The court may for good cause shown, allow late filing of the
14 notice or grant additional time to the parties to prepare
15 for trial or make such other order as may be appropriate.

16 When the defendant has asserted a defense of insanity,
17 the court may find the defendant guilty but mentally ill if
18 after hearing all of the evidence, the court finds beyond
19 a reasonable doubt that the defendant:

20 (a) Is guilty of the public offense charged; and

21 (b) Was mentally ill at the time of the commission of
22 the public offense; and

23 (c) Was not legally insane at the time of the commission
24 of the public offense.

25 Sec. 6. Section 813.2, rule of criminal procedure 21,
26 subsection 1, Code 1981, is amended to read as follows:

27 1. FORM OF VERDICTS. In open court the jury must render
28 a verdict of "guilty" or a verdict of "guilty but mentally
29 ill" which ~~imports~~ verdicts import a conviction, or "not
30 guilty" or "not guilty by reason of insanity" or "not guilty
31 by reason of diminished responsibility", which imports
32 acquittal, on the material allegations in the charge. The
33 jury shall return a verdict determining the degree of guilt
34 in cases submitted to determine the grade of the offense.

35 Sec. 7. Section 813.2, rule of criminal procedure 21,

1 subsection 8, Code 1981, is amended to read as follows:

2 8. ACQUITTAL ON GROUND OF INSANITY OR DIMINISHED
3 RESPONSIBILITY; COMMITMENT; GUILTY BUT MENTALLY ILL. If the
4 defense is insanity or diminished responsibility of the
5 defendant, the jury must be instructed, if it acquits the
6 defendant on that ground, to state that fact in its verdict.
7 Upon hearing, the court may thereupon, if the defendant is
8 found to be dangerous to the public peace and safety, order
9 the defendant committed to one of the mental health institutes
10 or the Iowa security medical facility, or retained in custody,
11 until he or she demonstrates good mental health and is
12 considered no longer dangerous to the public peace and safety
13 or to himself or herself.

14 When the defense of insanity has been presented during
15 the trial, the court, where warranted by the evidence, shall
16 also provide the jury with a special verdict form of guilty
17 but mentally ill, as to each public offense charged and shall
18 separately instruct the jury that a special verdict of guilty
19 but mentally ill may be returned instead of a general verdict,
20 but that such special verdict requires a finding by the jury
21 beyond a reasonable doubt that the defendant committed the
22 acts charged and the defendant was not legally insane at the
23 time of the commission of those acts but that he or she was
24 mentally ill at such time.

25 Sec. 8. Section 813.2, rule of criminal procedure 45,
26 Code 1981, is amended to read as follows:

27 RULE 45. TRIAL DATE. Upon a plea other than guilty, the
28 magistrate shall set a trial date which shall be at least
29 fifteen days after the plea is entered. The magistrate shall
30 notify the prosecuting attorney of the trial date and shall
31 advise the defendant that the trial will be without a jury
32 unless demand for jury trial is made at least ten days prior
33 to the date set for trial. Failure to make a jury demand
34 in the manner prescribed herein constitutes a waiver of jury.
35 If demand is made, the action shall be tried by a jury of

1 six members. Upon the request of the defendant, the magistrate
2 may set the date of trial at a time less than fifteen days
3 after a plea other than guilty is entered unless the plea
4 is guilty but mentally ill. The magistrate shall notify the
5 defendant that a request for earlier trial date shall
6 constitute a waiver of jury.

7 Sec. 9. Chapter 901, Code 1981, is amended by adding the
8 following new section:

9 NEW SECTION. SENTENCING AND TREATMENT OF DEFENDANT FOUND
10 GUILTY BUT MENTALLY ILL.

11 1. After a plea or verdict of guilty but mentally ill
12 for any public offense, the court shall order a presentence
13 investigation and report pursuant to sections 901.2 and 901.3,
14 and shall set a date for a sentencing hearing. The court
15 may impose any sentence upon the defendant which could be
16 imposed pursuant to law upon a defendant who had been convicted
17 of the same public offense without a finding of mental illness.

18 2. If the court imposes a sentence of imprisonment upon
19 a defendant who has been found guilty but mentally ill, the
20 defendant shall be committed to the director of the division
21 of adult corrections, who shall cause periodic inquiry and
22 examination to be made concerning the nature, extent,
23 continuance, and treatment of the defendant's mental illness.
24 The division of adult corrections shall provide such
25 psychiatric, psychological, or other counseling and treatment
26 for the defendant as it determines necessary.

27 3. The director of the division of adult corrections may
28 transfer the defendant to the department of mental health,
29 mental retardation and developmental disabilities in accordance
30 with the provisions of section 218.90.

31 4. The department of mental health, mental retardation
32 and developmental disabilities shall return to the division
33 of adult corrections any person committed to it pursuant to
34 this section whose sentence has not expired and whom the
35 department of mental health, mental retardation and

1 developmental disabilities deems no longer requires
2 hospitalization for mental treatment, mental retardation,
3 or addiction.

4 5. The division of adult corrections shall notify the
5 director of mental health, mental retardation and developmental
6 disabilities of the expiration of the sentence of any person
7 transferred to the department of mental health, mental
8 retardation and developmental disabilities under this section.
9 If the department of mental health, mental retardation and
10 developmental disabilities determines that any such person
11 requires further hospitalization, it shall file an appropriate
12 petition for involuntary commitment pursuant to the Code.

13 6. a. All persons found guilty but mentally ill, whether
14 by plea or by verdict, who are placed on probation or sentenced
15 to a term of periodic imprisonment or a period of conditional
16 discharge shall be required to submit to a course of mental
17 treatment prescribed by the sentencing court.

18 b. The course of treatment prescribed by the court shall
19 reasonably assure the defendant's satisfactory progress in
20 treatment or habilitation and for the safety of the defendant
21 and others. The court shall consider terms, conditions and
22 supervision which may include, but need not be limited to,
23 notification and discharge of the person to the custody of
24 his or her family, community adjustment programs, periodic
25 checks with legal authorities and outpatient care and
26 utilization of local mental health or developmental
27 disabilities facilities.

28 c. Failure to continue treatment, except by agreement
29 with the treating person or agency and the court, shall be
30 a basis for the institution of probation revocation
31 proceedings.

32 d. The period of probation shall not be shortened without
33 receipt and consideration of such psychiatric or psychological
34 report or reports as the court may require.

35 Sec. 10. Section 901.2, unnumbered paragraph 1, Code 1981,

1 is amended to read as follows:

2 Upon a plea of guilty, a verdict of guilty, or a special
3 verdict upon which a judgment of conviction of any public
4 offense may be rendered, the court shall receive from the
5 state, from the judicial district department of correctional
6 services, and from the defendant any information which may
7 be offered which is relevant to the question of sentencing.
8 The court may consider information from other sources. The
9 court shall order a presentence investigation when the offense
10 is a class "B", class "C", or class "D" felony or when the
11 defendant is found guilty but mentally ill for any public
12 offense. The court may order a presentence investigation
13 when the offense is an aggravated or serious misdemeanor.

14 Sec. 11. Section 901.3, Code 1981, is amended to read
15 as follows:

16 901.3 PRESENTENCE INVESTIGATION REPORT. Whenever a
17 presentence investigation is ordered by the court, the
18 investigator shall promptly inquire into: The defendant's
19 characteristics, family and financial circumstances, needs,
20 and potentialities, including the presence of any previously
21 diagnosed mental disorder; the defendant's criminal record
22 and social history; the circumstances of the offense; the
23 time the defendant has been in detention; and the harm to
24 the victim, the victim's immediate family, and the community.
25 All local and state mental and correctional institutions,
26 courts, and police agencies shall furnish to the investigator
27 on request the defendant's criminal record and other relevant
28 information. With the approval of the court, a physical
29 examination or psychiatric evaluation of the defendant may
30 be ordered, or the defendant may be committed to an inpatient
31 or outpatient psychiatric facility for an evaluation of his
32 or her personality and mental health. The results of any
33 such examination or evaluation shall be included in the report
34 of the investigator. The presentence investigation report
35 of a defendant found guilty but mentally ill shall include

1 the psychiatric or psychological report or reports as provided
2 for in section 9 of this Act.

3 Sec. 12. Section 907.3, Code 1981, is amended by adding
4 the following new subsection:

5 NEW SUBSECTION. 3. The use of this section for defendants
6 found guilty but mentally ill is subject to the conditions
7 imposed in section 9 of this Act.

8 Sec. 13. Section 909.1, Code 1981, is amended to read
9 as follows:

10 909.1 FINE WITHOUT IMPRISONMENT. Upon a verdict or plea
11 of guilty of any public offense for which a fine is authorized
12 except a plea or verdict of guilty but mentally ill, the court
13 may impose a fine instead of any other sentence where it
14 appears that the fine will be adequate to deter the defendant
15 and to discourage others from similar criminal activity.

16 Sec. 14. The supreme court shall amend any criminal
17 procedure forms pursuant to section 813.4, to conform the
18 forms to the provisions of this Act.

19 EXPLANATION

20 This bill provides for the plea and verdict of guilty but
21 mentally ill. Under the bill, the defense of insanity however
22 would remain a defense when applicable. Also the provisions
23 of chapter 812 including the provisions concerning the trial
24 of a person without mental capacity remain applicable.

25 This bill becomes effective July 1 following its enactment.

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PROPOSED SENATE/HOUSE FILE _____

BY (PROPOSED JUDICIARY AND LAW
ENFORCEMENT BILL BY THE
SENTENCING JOINT SUBCOMMITTEE)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the collection of filing and docketing fees
2 for indictments or informations.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 331.705, subsection 1, paragraph a,
 2 Code 1981 Supplement, is amended to read as follows:
 3 a. For filing a petition, indictment, information, appeal
 4 or writ of error and docketing them, twenty-five dollars.
 5 Four dollars of the fee shall remain in the county treasury
 6 for the use of the county and twenty-one dollars of the fee
 7 shall be paid into the state treasury. One dollar shall be
 8 deposited in the judicial retirement fund created in section
 9 605A.4 to be used to pay retirement benefits of the judicial
 10 retirement system. The remainder of the fee shall be deposited
 11 in the general fund of the state. In counties having a
 12 population of one hundred thousand or over, an additional
 13 one dollar shall be charged and collected, to be known as
 14 the journal publication fee and used for the purposes provided
 15 for in section 618.13.

16 EXPLANATION

17 This bill provides for the collecting of a filing fee for
 18 the filing of a criminal indictment or information. An
 19 attorney general's opinion dated October 21, 1981 states there
 20 is no present authority for the collection of the fees in
 21 these instances.

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PROPOSED HOUSE/SENATE FILE _____

BY (PROPOSED JUDICIARY AND LAW EN-
FORCEMENT COMMITTEE BILL PROPOSE
BY THE SENTENCING JOINT SUBCOM-
MITTEE.)

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the sentences of inmates committed to the
2 custody of the division of adult corrections of the depart-
3 ment of social services.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Sections 2 through 8 of this Act are enacted
2 as a new chapter of the Code.

3 Sec. 2. NEW SECTION. CONDUCT REVIEW. A conduct review
4 committee or an independent hearing officer shall be
5 established at each institution under the department of social
6 services, division of adult corrections. Each committee
7 established shall consist of three members who shall be
8 appointed by the director of the division of adult corrections.
9 Each independent hearing officer shall be appointed by the
10 director of the division of adult corrections. The committees
11 or hearing officers, or both, shall review the conduct of
12 inmates in the custody of their respective institutions, as
13 provided in section 5 of this Act.

14 Sec. 3. NEW SECTION. GOOD CONDUCT TIME. Each inmate
15 of an institution under the department of social services,
16 division of adult corrections, shall be given a reduction
17 of sentence of one day for each day of good conduct while
18 committed to one of the division's institutions. Computation
19 of good conduct time is subject to the following conditions:

20 1. Time served in jail or other facility, credited by
21 the clerk of court prior to actual placement in a correctional
22 institution, shall accrue for purposes of reduction of sentence
23 under this section.

24 2. Time spent during escape shall be forfeited for purposes
25 of reduction of sentence under this section. An inmate who
26 escapes shall forfeit all good conduct time accrued and not
27 forfeited prior to the escape, unless the inmate voluntarily
28 surrenders.

29 3. Time between parole violation and incarceration shall
30 be forfeited for purposes of reduction of sentence under this
31 section.

32 4. Time spent during parole shall not accrue for purposes
33 of reduction of sentence under this section.

34 5. Good conduct time shall not accrue to an inmate while
35 serving a life sentence. However, good conduct time shall

1 accrue after an inmate's life sentence is commuted and shall
2 be computed as of the date of commutation, not the date of
3 commitment to the custody of the director.

4 6. The maximum amount of good conduct time that can be
5 earned shall be credited to the maximum sentence either at
6 the time of admission, or on a periodic basis, setting a
7 tentative discharge date, except in life sentences.

8 Sec. 4. NEW SECTION. WORK TIME.

9 1. In addition to time awarded for good conduct pursuant
10 to section 3 of this Act a reduction of sentence may be given
11 to inmates who while committed to the custody of the director
12 of the division of adult corrections of the department of
13 social services, are employed in the institution, in Iowa
14 state industries, in an inmate employment program established
15 by the director, or who are satisfactorily participating in
16 an educational program approved by the director. The reduction
17 of sentence shall be one day for each day of employment or
18 each day of satisfactory participation in an approved
19 educational program and shall be known as "work time".

20 2. Work time shall not accrue to an inmate while serving
21 a life sentence. However, work time shall accrue for each
22 day of employment after an inmate's life sentence is commuted.

23 3. Work time shall not accrue to an inmate while on parole.

24 4. The work time reduction of sentence shall be computed
25 monthly adjusting the inmate's tentative discharge date.

26 5. The director of the division of adult corrections shall
27 establish by regulation the requirements and hours of
28 employment for qualifying for a "day of employment" and the
29 requirements and hours for qualifying for "a day of
30 satisfactory performance in an approved educational program"
31 for a reduction of sentence pursuant to this section.

32 Sec. 5. NEW SECTION. LOSS OR FORFEITURE OF GOOD CONDUCT
33 TIME AND WORK TIME.

34 1. Upon finding that an inmate has violated an
35 institutional rule, the conduct review committee or the

1 independent hearing officer may order forfeiture of any or
2 all good conduct time and work time, earned and not forfeited
3 up to the date of the infraction by the inmate. The good
4 conduct review committee or independent hearing officer shall
5 have discretion within the guidelines established pursuant
6 to section 6 of this Act, to determine the amount of time
7 that should be forfeited based upon the severity of the
8 infraction. Prior infractions by the inmate may be considered
9 by the committee or hearing officer in the decision.

10 2. The orders of the committee or hearing officer is
11 subject to appeal to the superintendent or warden of the
12 institution who may either affirm, modify, or reverse the
13 order, provided however that in no instance shall any sanctions
14 be increased on appeal. A decision of the superintendent
15 or warden is subject to review by the director of the division
16 of adult corrections who may either affirm, modify, or reverse
17 the decision, provided however that in no instance shall any
18 sanction be increased.

19 3. The director of the division of adult corrections may
20 restore all or any portion of previously forfeited good conduct
21 time and work time, following a periodic review of an inmate's
22 progress.

23 4. The inmate disciplinary procedure including but not
24 limited to the method of forfeiting time pursuant to this
25 chapter, is not a contested case subject to chapter 17A.

26 Sec. 6. NEW SECTION. POLICIES AND PROCEDURES. The
27 director of the division of adult corrections, department
28 of social services, shall develop policy and procedural
29 guidelines to implement sections 2 through 5 of this Act.
30 By the effective date of this Act, the director shall establish
31 regulations specifying disciplinary offenses which may result
32 in the loss of good conduct time, work time, or both, and
33 the amount of good conduct time, work time, or both, which
34 may be lost as a result of each disciplinary offense.

35 Sec. 7. NEW SECTION. TIME TO BE SERVED--CREDIT. An

1 inmate shall not be discharged from the penitentiary, the
2 men's or women's reformatory, or the Iowa security medical
3 facility until the inmate has served the full term for which
4 the inmate was sentenced, less good conduct time and work
5 time earned and not forfeited, unless the inmate is pardoned
6 or otherwise legally released. The inmate shall be deemed
7 to be serving the sentence from the day on which the inmate
8 is received into the institution. However, if an inmate was
9 confined to a county jail or other correctional or mental
10 facility at any time prior to sentencing, or after sentencing
11 but prior to the case having been decided on appeal, because
12 of failure to furnish bail or because of being charged with
13 a nonbailable offense, the inmate shall be given credit for
14 the days already served upon the term of the sentence. The
15 clerk of the district court of the county from which the
16 inmate was sentenced, shall certify to the warden the number
17 of days so served.

18 Sec. 8. NEW SECTION. SEPARATE SENTENCES. When an inmate
19 is committed under several convictions with consecutive
20 sentences, they shall be construed as one continuous sentence
21 in the granting or forfeiting of good conduct time and work
22 time.

23 Sec. 9. NEW SECTION. COMMISSION ESTABLISHED. A commission
24 of ten members to be known as the sentencing guidelines
25 commission is established. Members of the commission shall
26 include the following:

- 27 1. The chief justice of the supreme court or the chief
28 justice's designee.
- 29 2. Two district court judges appointed by the majority
30 vote of the state judicial council.
- 31 3. One public defender appointed by the governor.
- 32 4. One county attorney appointed by the governor.
- 33 5. The director of the division of adult corrections of
34 the department of social services or the director's designee.
- 35 6. One representative of community corrections appointed

1 by the governor.

2 7. One practicing criminal trial attorney appointed by
3 the governor.

4 8. Two public members appointed by the governor.

5 Sec. 10. NEW SECTION. LENGTH OF APPOINTMENT. Each
6 commission member shall be appointed for four years and shall
7 continue to serve during that time as long as the member
8 occupies the position which made the member eligible for the
9 appointment. Each member shall continue in office until a
10 successor is appointed. Members are eligible for
11 reappointment, and appointment may be made to fill an unexpired
12 term.

13 Sec. 11. NEW SECTION. OFFICERS--MEETINGS. The commission
14 shall elect a chairperson and other officers it deems necessary
15 from among its membership. It shall meet on the call of the
16 chairperson or a majority of the members.

17 Sec. 12. NEW SECTION. DUTIES.

18 1. The commission shall, on or before January 1, 1984,
19 promulgate sentencing guidelines for the district court within
20 the limitations set forth in chapters 902 and 903, based on
21 reasonable offense and offender characteristics. The
22 guidelines promulgated by the commission shall be submitted
23 to the general assembly and shall be adopted by the procedure
24 for the adoption of rules provided for in section 684.19.
25 The adopted guidelines shall be advisory to the district court
26 and shall establish:

27 a. The circumstances under which imprisonment and under
28 which parole of an offender is proper.

29 b. A presumptive, fixed sentence for offenders for whom
30 imprisonment is proper, based on each appropriate combination
31 of reasonable offense and offender characteristics and the
32 risk to public safety including facts and circumstances which
33 made a particular offense a crime for which prior to the
34 effective date of this Act, a mandatory minimum sentence was
35 required to be served. The guidelines may provide for an

1 increase or decrease of up to fifteen percent in the
2 presumptive, fixed sentence.

3 c. Appropriate sanctions for offenders for whom
4 imprisonment is not proper, which shall make specific reference
5 to noninstitutional sanctions, including but not limited to
6 fines, restitution, work release, community-based correctional
7 programs, probation, deferred judgment, deferred sentence,
8 and suspended sentence.

9 In establishing the sentencing guidelines, the commission
10 shall take into consideration current sentencing and release
11 practices and correctional resources, including but not limited
12 to the capacities of local and state correctional facilities.

13 2. The commission shall study the impact of the sentencing
14 guidelines after their implementation, shall serve as a
15 clearing house and information center for the collection,
16 preparation, analysis, and dissemination of information on
17 state and local sentencing practices, and shall conduct ongoing
18 research regarding sentencing guidelines, use of imprisonment
19 and alternatives to imprisonment, plea bargaining, and other
20 matters relating to the improvement of the criminal justice
21 system. At the beginning of each general assembly the
22 commission may make recommendations to the general assembly
23 regarding changes in the sentencing guidelines, the criminal
24 code, criminal procedures, and other aspects of sentencing.
25 Changes to the sentencing guidelines shall be submitted to
26 the general assembly and shall be adopted by the procedure
27 for the adoption of rules provided for in section 684.19.

28 3. The commission shall, on or before July 1, 1983,
29 promulgate criteria for the early parole, release or discharge
30 of inmates in the state's prisons wherever there is declared
31 a prison overcrowding state of emergency. The criteria for
32 release shall be based on reasonable offense and offender
33 characteristics and shall establish a priority of types of
34 offenders to be released or discharged if early parole, release
35 or discharge is authorized by law because of the state of

1 emergency.

2 Sec. 13. NEW SECTION. EXPENSES. Members of the commission
3 shall serve without compensation but shall receive actual
4 and reasonable expenses, including travel at the state rate
5 set forth in section 18.117. The office of the supreme court
6 administrator shall provide necessary staff assistance to
7 the commission in the performance of its duties.

8 Sec. 14. Section 218.40, Code 1981, is amended to read
9 as follows:

10 218.40 SERVICES REQUIRED. Inmates of said institutions
11 subject to the provisions hereinafter provided, may be required
12 to render any proper and reasonable service including hard
13 labor, either in the institutions proper or in the industries
14 established in connection therewith.

15 Sec. 15. Section 232.55, subsection 2, Code 1981, is
16 amended to read as follows:

17 2. The adjudication and disposition of a child and evidence
18 given in a proceeding under this division shall not be
19 admissible as evidence against the child in any subsequent
20 proceeding in any other court before or after reaching majority
21 except in a sentencing proceeding after conviction of a felony,
22 aggravated misdemeanor or serious misdemeanor, and a
23 presentence investigation for these offenses may include
24 information as to the adjudication and disposition and
25 evidenced in a proceeding under this division.

26 Sec. 16. Section 245.3, Code 1981, is amended to read
27 as follows:

28 245.3 SERVICE REQUIRED. The superintendent may, with
29 the approval of the state director, require any inmate to
30 perform any service including hard labor, suited to her
31 strength and attainments and which may be needed for the
32 benefit of the reformatory or for the welfare of such the
33 inmate.

34 Sec. 17. Section 246.31, Code 1981, is amended to read
35 as follows:

1 246.31 HARD LABOR AND SOLITARY IMPRISONMENT. All
 2 commitments to either of said institutions ~~must be~~ are at
 3 hard labor. Solitary imprisonment of prisoners shall not
 4 be employed except for the purpose of discipline. An inmate
 5 may be required to perform any service including hard labor,
 6 suiting to his strength and attainment and which may be needed
 7 for the benefit of the reformatory or penitentiary or for
 8 the welfare of the inmate.

9 Sec. 18. Section 813.2, rule 6, subsection 6, Code 1981,
 10 is amended by striking the subsection.

11 Sec. 19. Section 813.2, rule 21, subsection 2, Code 1981,
 12 is amended to read as follows:

13 2. ANSWERS TO INTERROGATORIES. It must also return with
 14 the general verdict answers to special interrogatories
 15 submitted by the court upon its own motion, or at the request
 16 of the defendant in prosecutions where the defense is an
 17 affirmative one, or it is claimed any witness is an accomplice
 18 or there has been a failure to corroborate where corroboration
 19 is required.

20 ~~Where a defendant is alleged to be subject to the minimum~~
 21 ~~sentence provisions of section 902.7, The Code (use of~~
 22 ~~firearms), and the allegation is supported by the evidence,~~
 23 ~~the court shall submit a special interrogatory concerning~~
 24 ~~that matter to the jury.~~

25 Sec. 20. Section 814.5, subsection 1, Code 1981, is amended
 26 by adding the following new lettered paragraph:

27 NEW LETTERED PARAGRAPH. A sentence for a criminal de-
 28 fendant which sentence deviates beyond the permissible limits
 29 of the sentencing guidelines promulgated pursuant to section
 30 12 of this Act.

31 Sec. 21. Section 901.5, unnumbered paragraph 1, Code 1981,
 32 is amended to read as follows:

33 After receiving and examining all pertinent information,
 34 including the presentence investigation report, if any, the
 35 court shall consider the following sentencing options in

1 conjunction with the sentencing guidelines promulgated pursuant
2 to section 12 of this Act. The court shall determine which
3 of them is authorized by law for the offense, and of the
4 authorized sentences, which of them or which combination of
5 them, in the discretion of the court, will provide maximum
6 opportunity for the rehabilitation of the defendant, and for
7 the protection of the community from further offenses by the
8 defendant and others.

9 Sec. 22. Section 901.5, subsection 2, Code 1981, is amended
10 by striking the subsection.

11 Sec. 23. Section 901.5, Code 1981, is amended by adding
12 the following new unnumbered paragraph:

13 NEW UNNUMBERED PARAGRAPH. If the sentence entered by the
14 court departs from the sentencing guidelines, the court shall
15 state in writing the reasons for the departure.

16 Sec. 24. Section 901.6, Code 1981, is amended to read
17 as follows:

18 901.6 JUDGMENT ENTERED. If judgment is not deferred,
19 and no sufficient cause is shown why judgment should not be
20 pronounced and none appears to the court upon the record,
21 judgment shall be pronounced and entered. In every case in
22 which judgment is entered, the court shall include in the
23 judgment entry the number of the particular section of the
24 Code under which the defendant is sentenced and a statement
25 of the days credited pursuant to section 246-38 3, subsection
26 1, of this Act, shall be incorporated into the sentence.

27 Sec. 25. Section 902.1, Code 1981, is amended to read
28 as follows:

29 902.1 CLASS "A" FELONY. Upon a plea of guilty, a verdict
30 of guilty, or a special verdict upon which a judgment of
31 conviction of a class "A" felony may be rendered, the court
32 shall enter a judgment of conviction and shall commit the
33 defendant into the custody of the director of the division
34 of adult corrections for the rest of the defendant's life.
35 Nothing in the Iowa corrections code pertaining to deferred

1 judgment, deferred sentence, suspended sentence or
2 reconsideration of sentence shall apply to a class "A" felony,
3 ~~and no person convicted of a class "A" felony shall be released~~
4 ~~on parole unless the governor commutes the sentence to a term~~
5 ~~of years.~~

6 Sec. 26. Section 902.3, Code 1981, is amended to read
7 as follows:

8 902.3 ~~INDETERMINATE~~ DETERMINATE SENTENCE--PAROLE. When
9 a judgment of conviction of a felony other than a class "A"
10 felony is entered against any person, the court, in imposing
11 a sentence of confinement, shall commit the person into the
12 custody of the director of the division of adult corrections
13 ~~for an indeterminate term, the maximum length of.~~ When the
14 court imposes a sentence of confinement the court shall impose
15 a maximum length of confinement which shall not exceed the
16 limits as fixed by section 902.9 ~~nor shall the term be less~~
17 ~~than the minimum term imposed by law, if a minimum sentence~~
18 ~~is provided~~ and shall impose a minimum length of confinement.
19 The minimum length of confinement shall be computed by
20 subtracting the maximum good conduct and work time that may
21 be earned by the defendant, from the maximum length of
22 confinement imposed by the court.

23 In addition to the maximum length of confinement imposed
24 by the court, the court may order that upon expiration of
25 the defendant's period of confinement, the defendant shall
26 be placed on parole. The period of confinement and parole
27 together shall not exceed the limits as fixed by section
28 902.9. If an offender's parole is revoked, the offender shall
29 serve the remaining time of the sentence of parole in
30 confinement.

31 The court shall consider the sentencing guidelines
32 promulgated pursuant to section 12 of this Act, in imposing
33 the length of confinement, and in imposing parole.

34 Sec. 27. Section 902.4, Code 1981, is amended to read
35 as follows:

1 902.4 RECONSIDERATION OF FELON'S SENTENCE. For a period
2 of ninety days from the date when a person convicted of a
3 felony, other than a class "A" felony ~~or a felony for which~~
4 ~~a minimum sentence of confinement is imposed,~~ begins to serve
5 a sentence of confinement, the court, on its own motion or
6 on the recommendation of the commissioner of social services,
7 may order the person to be returned to the court, at which
8 time the court may review its previous action and reaffirm
9 it or substitute for it any sentence permitted by law. The
10 court's final order in any such proceeding shall be delivered
11 to the defendant personally or by certified mail. Such action
12 is discretionary with the court, and its decision to take
13 such action or not to take such action is not subject to
14 appeal. The provisions of this section notwithstanding, for
15 the purposes of appeal, a judgment of conviction of a felony
16 is a final judgment when pronounced.

17 Sec. 28. Section 902.6, Code 1981, is amended to read
18 as follows:

19 902.6 RELEASE. A person who has been committed to the
20 custody of the director of the division of adult corrections
21 shall remain in such custody until released ~~by the order of~~
22 ~~the board of parole, in accordance with the law governing~~
23 ~~parole,~~ or by order of the judge after reconsideration of
24 a felon's sentence pursuant to section 902.4, or until the
25 maximum term of the person's confinement, as fixed by law,
26 has been completed.

27 Sec. 29. Section 906.1, Code 1981, is amended to read
28 as follows:

29 906.1 DEFINITION OF PAROLE. Parole is the release of
30 a person who has been committed to the custody of the
31 commissioner of social services by reason of the person's
32 commission of a public offense ~~prior to~~ following the
33 expiration of the person's ~~term~~ sentence of confinement,
34 subject to supervision by the department of social services
35 and on conditions imposed by the department.

1 Sec. 30. Section 906.3, Code 1981, is amended to read
2 as follows:

3 906.3 AUTHORITY OF PAROLE BOARD. The board of parole
4 shall promulgate regulations regarding a system of paroles
5 from correctional institutions including regulations as to
6 the punishment and consequences for violations of certain
7 conditions of parole, and shall direct, control, and supervise
8 the administration of such system of paroles. The board
9 sentencing court shall determine which of those persons who
10 have been committed to the custody of the director of the
11 division of adult corrections, by reason of their conviction
12 of a public offense, shall be released on parole. The grant
13 or denial of parole shall not be deemed a contested case as
14 defined in section 17A.2.

15 Sec. 31. Section 906.5, Code 1981, is amended to read
16 as follows:

17 906.5 ~~RECORD-REVIEWED--ELIGIBILITY-OF-PRIOR-FORCIBLE-FELON~~
18 ~~FOR PAROLE--RULES.~~ Within one year after the commitment of
19 any person other than a class "A" felon to the custody of
20 the director of the division of adult corrections, a member
21 of the board shall interview the person,-- Thereafter, at
22 regular intervals, not to exceed one year, the board shall
23 interview the person and consider his or her prospects for
24 parole,-- At such time, the board shall consider all pertinent
25 information regarding this person, including the circumstances
26 of the person's offense, any presentence report which may
27 be available, the previous social history and criminal record
28 of such person, the person's conduct, employment and attitude
29 in prison, and the reports of such physical and mental
30 examinations as have been made.

31 if the person who is under consideration for parole is
32 serving a sentence for conviction of a felony and has a
33 criminal record of one or more prior convictions for a forcible
34 felony or a crime of a similar gravity in this or any other
35 state, parole shall be denied unless the defendant has served

1 ~~at-least-one-half-of-the-maximum-term-of-his-or-her-sentence-~~
2 Every person while on parole shall be under the supervision
3 of the department of social services, which shall prescribe
4 regulations for governing persons on parole. The board may
5 adopt other rules not inconsistent with the above as it may
6 deem proper or necessary for the performance of its functions.

7 Sec. 32. Section 906.14, Code 1981, is amended to read
8 as follows:

9 906.14 DETAINERS. Prisoners against whom detainers have
10 been filed, may, after serving ~~a-portion~~ all of their sentence
11 term of confinement, be released by while on parole to the
12 institution or authorities filing the detainer.

13 Any detainer filed against a prisoner must within six
14 months be supported by a grand jury indictment or county
15 attorney's information. In the event such indictment is
16 returned or information is filed, the prisoner shall have
17 the right to demand immediate trial at the next term of court
18 where the charge is filed. The prosecuting agency shall pay
19 all costs of transportation, necessary expenses incurred by
20 the prisoner and such guards and other safety measures as
21 the warden shall deem necessary for the prisoner to appear
22 at his or her trial.

23 In the event a detainer is not supported within six months
24 by a county attorney's information or grand jury indictment,
25 or in the event the prosecuting agency refuses or fails to
26 give the prisoner immediate trial, or refuses or fails to
27 furnish transportation and pay all other necessary and related
28 costs incident to the prisoner appearing at his or her trial,
29 the detainer shall be held to be invalid and the parole board
30 shall disregard such detainer ~~in-considering-a-prisoner-for~~
31 ~~parole.~~

32 Sec. 33. Section 906.15, Code 1981, is amended to read
33 as follows:

34 906.15 DISCHARGE FROM PAROLE. Unless sooner discharged,
35 a person released on parole shall be discharged when his or

1 her term of parole equals the period of imprisonment parole
 2 specified in the person's sentence, ~~less all time served in~~
 3 ~~confinement. Discharge from parole may be granted prior to~~
 4 ~~such time, when an early discharge is appropriate. The board~~
 5 ~~shall periodically review all parolees, and when it shall~~
 6 ~~determine that any person on parole is able and willing to~~
 7 ~~fulfill the obligations of a law-abiding citizen without~~
 8 ~~further supervision, it shall discharge the person from parole.~~
 9 ~~in either event, discharge~~ Discharge from parole shall
 10 terminate the person's sentence.

11 Sec. 34. Section 906.16, unnumbered paragraph 1, Code
 12 1981, is amended to read as follows:

13 906.16 PAROLE TIME COUNTED AGAINST SENTENCE OF PAROLE.
 14 The time when a prisoner is on parole ~~from the institution~~
 15 shall be held to apply upon against that portion of the
 16 sentence against the parolee mandating parole, even if the
 17 parole is subsequently revoked, except that the time when
 18 the parolee is in violation of the terms of the parole
 19 agreement shall not apply upon the sentence.

20 Sec. 35. Section 908.9, Code 1981, is amended to read
 21 as follows:

22 908.9 DISPOSITION OF VIOLATOR. If the parole of any
 23 parole violator is revoked, the violator shall remain in the
 24 custody of the department of social services ~~under the terms~~
 25 ~~of the parolee's original commitment to serve the remainder~~
 26 of the term of the sentence of parole in confinement. If
 27 the parole of any parole violator is not revoked, the board
 28 shall order his or her release subject to the terms of his
 29 or her parole with any modifications that the board shall
 30 determine proper.

31 Sec. 36. Sections 246.38, 246.39, 246.41, 246.42, 246.43,
 32 and 246.45, Code 1981, are repealed except they shall remain
 33 in effect for those persons sentenced for crimes committed
 34 prior to the effective date of this section.

35 Sec. 37. Sections 821.4, 902.7, 902.8, 906.4, 906.6,

1 906.7, and 906.14, Code 1981, are repealed, except they shall
2 remain in effect for those persons sentenced for these
3 respective crimes committed prior to the effective date of
4 this section.

5 Sec. 38. Sections 1, 2, 3, 4, 5, 6, 7, 8, 24, 36, and
6 38 take effect October 1 following their enactment. Sections
7 1, 2, 3, 4, 5, 6, 7, and 8 apply to persons committed to the
8 custody of the director of the division of adult corrections,
9 department of social services, for crimes committed on or
10 after this effective date.

11 Sections 14, 16, and 17 take effect July 1 following
12 enactment. However, sections 14, 16, and 17 also apply to
13 persons committed to the custody of the director prior to
14 this effective date.

15 Sections 9, 10, 11, 12, 13, and 15 take effect July 1
16 following enactment.

17 Sections 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30,
18 31, 32, 33, 34, 35, and 37 take effect January 1 following
19 the bill's enactment and apply to persons sentenced for crimes
20 committed on or after this effective date.

21 EXPLANATION

22 This bill makes a number of significant changes in the
23 Code concerning the sentencing of criminal offenders.

24 Sections 1 through 8 and sections 24 and 36 replace the
25 present "good and honor time" sections of the Code which
26 reduce the length of sentences of inmates sentenced to the
27 custody of the director of the division of adult corrections
28 with another system that rewards good conduct of inmates.
29 An attorney general's opinion (dated November 29, 1977) in-
30 dicates that the current good and honor time sections of the
31 Code, 246.39, 246.41, and 246.43 are presently not being cor-
32 rectly followed with the possible exception of the honor time
33 section (special reduction section).

34 Sections 14, 16, and 17 of the bill clarifies that inmates
35 of the state's correctional institutions may be required to

1 perform "hard labor".

2 Sections 9 through 13 of the bill establish a commission
3 whose primary function is to promulgate sentencing guidelines
4 for use by the district court. If the court fails to abide
5 by the guidelines, it must state in writing its reasons for
6 doing so. The guidelines are to be completed by the commission
7 on or before January 1, after the bill's enactment and shall
8 be submitted to the general assembly for adoption in the
9 manner rules prescribed by the supreme court are submitted
10 to the general assembly for adoption.

11 Section 26 of the bill amends section 902.3 changing the
12 Iowa system of sentencing from an indeterminate scheme to
13 a determinate scheme. Pursuant to the section when the court
14 imposes a sentence of confinement, the court sets the maximum
15 length of confinement not to exceed the limits fixed by sec-
16 tion 902.9 and a minimum length.

17 Under the bill the system of parole is also changed. The
18 parole decision is made by the sentencing court at the time
19 of sentencing. The parole concept is changed from a method
20 of early release to a system of supervised release following
21 the sentence of confinement.

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PROPOSED HOUSE FILE _____

BY (PROPOSED JUDICIARY AND LAW
ENFORCEMENT COMMITTEE BILL
BY THE JOINT SENTENCING SUB-
COMMITTEE)

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act to prohibit the use of deferred judgments, deferred
2 sentences, or sentences for the offense of operating a
3 motor vehicle in violation of section 321.281.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 907.3, unnumbered paragraph 1, Code
2 1981, is amended to read as follows:

3 Pursuant to section 901.5, the trial court may, upon a
4 plea of guilty, a verdict of guilty, or a special verdict
5 upon which a judgment of conviction may be rendered, exercise
6 any of the options contained in subsections 1 and 2 of this
7 section. However, this section shall not apply to a forcible
8 felony nor to a violation of section 321.281.

9 EXPLANATION

10 This bill eliminates the availability of deferred judg-
11 ments, deferred sentences, and suspended sentences for the
12 offense of operating a motor vehicle while under the influence
13 of alcohol and the offense of operating a motor vehicle while
14 having thirteen-hundredths or more of one percent by weight
15 of alcohol in the blood. This bill will take effect July
16 1 following its enactment.

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PROPOSED SENATE FILE _____

BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY THE
SENTENCING JOINT SUBCOMMITTEE

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for the compensation of innocent victims of
2 criminal acts, and providing penalties for fraudulent claims.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. INTENT. It is the intent of the general
2 assembly to provide a method of compensating and assisting
3 those residents of the state who are innocent victims of
4 criminal acts and who suffer bodily injury or death as a
5 consequence. To that end, it is the intent of the general
6 assembly that those types and amounts of benefits and services
7 which are available to injured employees under chapter 85
8 be made available to innocent victims of crime as provided
9 in this Act.

10 Sec. 2. NEW SECTION. DEFINITIONS. As used in this Act,
11 unless the context otherwise requires:

12 1. "Criminal act" means an act committed or attempted
13 in this state on or after the effective date of this Act,
14 which is punishable as a felony or as an aggravated or serious
15 misdemeanor, under the laws of this state. However, the
16 operation of a motor vehicle, motorcycle, train, boat, or
17 aircraft in violation of law does not constitute a "criminal
18 act" for purposes of this Act unless the injury or death was
19 intentionally inflicted or the operation thereof was part
20 of the commission of another criminal act as defined in this
21 section or the injury was the result of operating a motor
22 vehicle in violation of section 321.281. For purposes of
23 determining whether or not a criminal act occurred, the
24 following rules apply:

25 a. An acquittal in a criminal prosecution or the absence
26 of such a prosecution is admissible but not conclusive in
27 a claim or proceeding under this Act as evidence of the
28 noncriminal character of the acts giving rise to the claim
29 or proceeding.

30 b. Evidence of a criminal conviction arising from acts
31 which are the basis for a claim or proceeding under this Act
32 is admissible in the claim or proceeding for the limited
33 purpose of proving the criminal character of the acts.

34 c. An act which, but for the insanity or mental
35 incompetence of the perpetrator, would constitute a criminal

1 act is a criminal act within the meaning of this Act.

2 2. "Victim" means a resident of the state who suffers
3 bodily injury or death as a proximate result of a criminal
4 act by another person, or as a proximate result of the victim's
5 reasonable effort to prevent a criminal act, or as a proximate
6 result of the victim's effort to apprehend a person reasonably
7 suspected of engaging in a criminal act. A victim assumes
8 those rights and duties of an employee under chapter 85 which
9 are assigned to the victim under section 6 of this Act.

10 3. "Child", "spouse", "dependent", "beneficiary", "injury",
11 "permanent partial disability", and "permanent total
12 disability" have the meanings assigned to them under chapter
13 85.

14 4. "Gainfully employed" means engaging on a regular and
15 continuous basis in a lawful activity from which a person
16 derives a livelihood.

17 5. "Out-of-pocket loss" means unreimbursed and
18 unreimbursable expenses or indebtedness reasonably incurred
19 for medical care or other services necessary as a result of
20 the bodily injury or death on which the claim under this Act
21 is based.

22 6. "Resident" means a person who has established residence
23 in this state prior to the criminal act which results in the
24 bodily injury or death for which a claim is made under this
25 Act.

26 Sec. 3. NEW SECTION. DUTIES OF INDUSTRIAL COMMISSIONER-
27 -GENERAL PROVISIONS.

28 The industrial commissioner shall:

29 1. Establish and administer a program of benefits to
30 victims of criminal acts pursuant to this Act, and assume
31 the powers and duties of the industrial commissioner or the
32 employer under chapter 85 to the extent necessary to administer
33 this Act.

34 2. Promulgate rules pursuant to chapter 17A governing
35 the administration of this Act, the filing of claims under

1 this Act, and the hearing and disposition of the claims.

2 3. Hear and determine claims for awards pursuant to this
3 Act, and reinvestigate or reopen cases as necessary.

4 4. Request from the department of public safety, department
5 of social services, Iowa department of job service, the
6 attorney general, county or municipal police departments or
7 agencies, or other public authorities or agencies, reasonable
8 assistance or data necessary to administer this Act. The
9 authorities and agencies shall furnish the requested assistance
10 or data unless prohibited by law.

11 5. Hold hearings, administer oaths or affirmations, examine
12 persons under oath or affirmation, and issue subpoenas
13 requiring the attendance and testimony of witnesses and the
14 production of books, papers, documents or other evidence.

15 6. Take affidavits or depositions within or outside this
16 state.

17 7. Direct medical examinations of victims.

18 8. Publicize through the department of public safety,
19 county or municipal police departments or agencies, or other
20 public authorities or agencies, the existence of this Act
21 including the procedures for obtaining compensation under
22 this Act.

23 9. Render annually to the governor and the general assembly
24 a written report of activities undertaken pursuant to this
25 Act.

26 Sec. 4. NEW SECTION. RIGHT OF ACTION AGAINST PERPETRATOR-
27 -SUBROGATION. A right of legal action against a person who
28 has committed a criminal act is not lost as a consequence
29 of receiving benefits under the provisions of this Act. If
30 a person receiving benefits under this Act seeks a remedy
31 for damages from a person who has committed a criminal act
32 or from another person civilly liable, the industrial
33 commissioner is subrogated to and has a lien upon the recovery
34 to the extent of the payments made by the industrial
35 commissioner to or on behalf of the person under this Act.

1 Sec. 5. NEW SECTION. APPLICATION FOR BENEFITS. In order
2 to claim benefits under this Act:

3 1. An application for benefits shall be filed with the
4 industrial commissioner within one hundred eighty days after
5 the date of the criminal act or within one hundred twenty
6 days after the date of death of the victim or the date that
7 the rights of dependents or beneficiaries accrue.

8 2. The criminal act shall be reported to a local police
9 department or sheriff's office within seventy-two hours of
10 its occurrence or, if it cannot reasonably be reported within
11 that period, within seventy-two hours of the time when a
12 report can reasonably be made.

13 Sec. 6. NEW SECTION. BENEFITS--DISQUALIFICATION--
14 DEDUCTIBLE. Benefits to or on behalf of a victim as a result
15 of a criminal act are payable as follows:

16 1. Benefits under this Act shall not be paid when the
17 bodily injury or death for which benefits are sought was any
18 of the following:

19 a. The result of consent, provocation or incitement by
20 the victim.

21 b. The result of an act committed by a person living in
22 the same household with the victim, unless a criminal
23 conviction for the act is obtained.

24 c. The result of an act committed by a person who is at
25 the time of the criminal act the spouse, child, stepchild,
26 parent, stepparent, brother, stepbrother, sister or stepsister
27 of the victim, or the parent or stepparent of the victim's
28 spouse or a brother, stepbrother, sister or stepsister of
29 the victim's spouse, unless a criminal conviction for the
30 act is obtained.

31 d. The result of the victim assisting, attempting, or
32 committing a criminal act.

33 e. Sustained while the victim was confined in a county
34 or city jail, federal jail, prison or other federal
35 institution, or state correctional institution or other

1 institution maintained and operated by the department of
2 social services.

3 2. The amount of an award shall be reduced by one hundred
4 dollars on each claim under this Act except that the reduction
5 shall not be made for persons who at the time of the criminal
6 act are sixty years of age or older or who are handicapped.
7 The industrial commissioner shall promulgate rules pursuant
8 to chapter 17A as to what constitutes "handicapped".

9 3. If the death of a victim is proximately caused by the
10 criminal act, the benefits established by sections 85.27
11 through 85.31 and the provisions relating to payment under
12 those sections apply under this Act. However, if the criminal
13 act results in the death of a victim who was not gainfully
14 employed at the time of the criminal act and for at least
15 three consecutive months during the twelve-month period
16 immediately preceding the criminal act, benefits are payable
17 as follows:

18 a. For the services and supplies necessitated by the
19 bodily injury which resulted in the victim's death as provided
20 in section 85.27.

21 b. For burial expenses as provided in section 85.28.

22 c. A lump sum payment of three thousand seven hundred
23 fifty dollars to each dependent spouse or child of the victim
24 as determined in section 85.42 or to actual dependents of
25 the victim as provided in section 85.44.

26 4. If the criminal act proximately causes the permanent
27 total disability of a victim, the benefits established in
28 sections 85.27 and 85.34 for permanent total disability, and
29 the provisions relating to payment contained in those sections
30 apply under this Act. However, if the criminal act proximately
31 causes the permanent total disability of a victim who was
32 not gainfully employed at the time of the criminal act and
33 for at least three consecutive months during the twelve-month
34 period immediately preceding the criminal act, the victim
35 shall receive monthly during the period of the disability

1 the following percentages of the average monthly wage under
2 the provisions of section 96.3, determined as of the date
3 of the criminal act:

4 a. If married at the time of the criminal act, twenty-
5 nine percent.

6 b. If married with one child at the time of the criminal
7 act, thirty-four percent.

8 c. If married with two children at the time of the criminal
9 act, thirty-eight percent.

10 d. If married with three children at the time of the
11 criminal act, forty-one percent.

12 e. If married with four children at the time of the
13 criminal act, forty-four percent.

14 f. If married with five or more children at the time of
15 the criminal act, forty-seven percent.

16 g. If unmarried at the time of the criminal act, twenty-
17 five percent.

18 h. If unmarried with one child at the time of the criminal
19 act, thirty percent.

20 i. If unmarried with two children at the time of the
21 criminal act, thirty-four percent.

22 j. If unmarried with three children at the time of the
23 criminal act, thirty-seven percent.

24 k. If unmarried with four children at the time of the
25 criminal act, forty percent.

26 l. If unmarried with five or more children at the time
27 of the criminal act, forty-three percent.

28 5. If the criminal act proximately causes the permanent
29 partial disability of the victim the benefits established
30 in sections 85.27 and 85.34 for permanent partial disability
31 and the provisions relating to payment contained in those
32 sections apply under this Act. However, if the criminal act
33 proximately causes the permanent partial disability of a
34 victim who was not gainfully employed at the time of the
35 criminal act and for at least three consecutive months during

1 the twelve-month period immediately preceding the criminal
2 act, the victim shall receive the number of weeks of permanent
3 partial disability compensation as provided in section 85.34,
4 subsection 2, with the weekly compensation rate figured as
5 the same percentage of the average monthly wage as provided
6 in subsection 4.

7 6. If the criminal act proximately causes the temporary
8 total disability of the victim the benefits established in
9 sections 85.27 and 85.33 for temporary total disability and
10 the provisions relating to payment contained in those sections
11 apply under this Act. However, a person is not eligible for
12 temporary total disability benefits under this Act if the
13 person was not gainfully employed at the time of the criminal
14 act and for at least three consecutive months during the
15 twelve-month period immediately preceding the criminal act.

16 7. The benefits established in section 85.70 for vocational
17 rehabilitation and the provisions relating to payment contained
18 in that section apply under this Act.

19 8. The provisions of sections 85.30, 85.32, 85.36, 85.37,
20 85.39, 85.42, 85.44, 85.45 through 85.48, and section 85.61,
21 apply to claims for benefits under this Act to the extent
22 applicable.

23 Sec. 7. NEW SECTION. MAXIMUM AWARD. Notwithstanding
24 any other provision of this Act except section 6, subsection
25 2, benefits awarded under this Act shall not exceed five
26 thousand dollars per claimant per criminal act less the one
27 hundred dollar deductible provided for by section 6, subsection
28 2. For purposes of this limitation, two or more related
29 criminal acts occurring simultaneously or in succession and
30 contributing to the injury or death, constitute one criminal
31 act.

32 Sec. 8. NEW SECTION. MARITAL STATUS--PAYMENT FOR OR ON
33 ACCOUNT OF CHILDREN. Notwithstanding the provisions of chapter
34 85 or of this Act, the marital status of a victim shall be
35 determined as of the date of the criminal act. References

1 in this Act to a surviving child refer to a living or conceived
2 child of the victim as of the date of the criminal act unless
3 the context clearly indicates the contrary.

4 Payments for or on account of a child shall cease when
5 the child is no longer dependent as provided in section 85.42
6 or 85.44, or on the death of the child, whichever occurs
7 first.

8 Sec. 9. NEW SECTION. MEDICAL AID. The benefits provided
9 in section 85.27 govern entitlement to medical benefits under
10 section 6 of this Act. However, with respect to ambulance
11 service, benefits are limited to reasonable transportation
12 costs from the place of injury to the nearest proper place
13 of emergency treatment. The attorney general may require
14 that the victim actually incur charges before benefits are
15 payable under this section.

16 Sec. 10. NEW SECTION. VICTIM COMPENSATION SURCHARGE.
17 Upon a plea of guilty, a verdict of guilty, or a special
18 verdict, upon which a judgment of conviction of a public
19 offense except a traffic offense or a conservation offense
20 is rendered in a court of this state, there shall be imposed
21 an additional cost or surcharge of ten dollars in addition
22 to any other costs or fees required by law. This surcharge
23 shall be collected by the clerk of the district court and
24 shall be forwarded to the treasurer of state to be deposited
25 in the fund established pursuant to section 11 of this Act.

26 Sec. 11. NEW SECTION. ESTABLISHMENT OF FUNDS. The
27 treasurer of state shall establish a fund in the state treasury
28 to administer this Act. Payment to the fund shall be from
29 the victim compensation surcharge, reimbursement, recoupment
30 and subrogation as provided in this Act, and from specific
31 contributions or grants. The fund shall not be commingled
32 with other funds or accounts administered by the industrial
33 commissioner.

34 Sec. 12. NEW SECTION. REIMBURSEMENT.

35 1. A person who has committed a criminal act resulting

1 in bodily injury or death compensated under this Act shall
2 reimburse the state as provided in this section.

3 2. A payment of benefits to or on behalf of a victim
4 under this Act creates a debt due and owing to the state by
5 a person found to have committed the criminal act in either
6 a civil or criminal court proceeding in which the person is
7 a party. However, the debt is limited to the amount provided
8 for in a civil judgment against the person or in a criminal
9 judgment ordering restitution.

10 3. If a convicted person who owes a debt to the state
11 as a consequence of this section, is placed on work release
12 or is released from the custody of a state correctional
13 facility on parole, the department of social services or the
14 parole board may have the schedule or amount of payments on
15 the debt set as a condition of work release or parole, subject
16 to modification based on change of circumstances.

17 4. The industrial commissioner in the interest of justice
18 and the rehabilitation of the individual may waive, decrease,
19 or adjust a requirement for payment due and owing the state
20 by a convicted person under this Act.

21 5. The industrial commissioner may bring a civil action
22 on behalf of the state in the district court to obtain
23 satisfaction of a debt created by this section.

24 Sec. 13. NEW SECTION. ERRONEOUS OR FRAUDULENT PAYMENT-
25 -REPAYMENT, WHEN--PENALTY.

26 1. If a payment or overpayment under this Act is made
27 because of clerical error, mistaken identity, innocent
28 misrepresentation by or on behalf of the recipient, or another
29 circumstance of a similar nature, not induced by fraud by
30 or on behalf of the recipient, the recipient is liable for
31 repayment. Repayment may be made by, but shall not be limited
32 to the reduction of future payments to the recipient under
33 this Act. Unless the attorney general notifies the claimant
34 of erroneous payment or overpayment within one year of the
35 making of the payment the claim for the payment or overpayment

1 is barred. The attorney general may waive, decrease, or
2 adjust the amount of a repayment claim.

3 2. If a payment or overpayment under this Act has been
4 induced by fraud by or on behalf of a recipient, the recipient
5 is liable for repayment to the fund. Repayment may be made
6 by but shall not be limited to the reduction of future payments
7 to the recipient under this Act. The recipient's liability
8 for payment or overpayment and penalty shall not be barred
9 under this subsection, if the attorney general does not notify
10 the claimant of erroneous payment or overpayment.

11 Sec. 14. NEW SECTION. COLLATERAL SOURCES OFFSET. Benefits
12 payable pursuant to this Act shall be reduced by the amount
13 of public or private insurance, workers' compensation or
14 unemployment benefits, or medical, health or disability
15 benefits available to the recipient because of the injury
16 or death, notwithstanding a contract provision to the contrary.
17 Benefits payable pursuant to this Act shall also be reduced
18 by the amount of a reimbursement directly to the recipient
19 from or on behalf of the person committing the criminal act.

20 Sec. 15. NEW SECTION. RELEASE OF INFORMATION IN
21 PERFORMANCE OF OFFICIAL DUTIES. Upon the request of the
22 industrial commissioner, a person in possession or control
23 of investigative or other information pertaining to an alleged
24 criminal act or victim claiming benefits under this Act shall
25 allow the inspection and reproduction of the information by
26 the industrial commissioner to be used only in the
27 administration and enforcement of this Act. Information and
28 records which are confidential under section 68A.7 and
29 information or records gleaned from the confidential
30 information or records remain confidential under this Act.

31 A person shall not incur legal liability by reason of
32 releasing information to the industrial commissioner under
33 this Act.

34 Sec. 16. Section 12.9, Code 1981, is amended to read as
35 follows:

1 12.9 ANNUAL REPORT OF FILING FEES. The treasurer of state
2 shall annually report to the governor and the general assembly
3 the total amount of fees and costs received by the treasurer
4 of state under section 602.55, subsection 1, and section
5 606.15, subsection 1, paragraph a, and subsection 2, for the
6 fiscal year ending June 30. The report shall be submitted
7 within ninety days following the completion of the fiscal
8 year.

9 Sec. 17. Section 606.15, Code 1981, is amended by adding
10 the following new unnumbered paragraph:

11 NEW UNNUMBERED PARAGRAPH. The clerk of the district court
12 shall charge and collect the victim compensation surcharge
13 as provided in section 10 of this Act.

14 Sec. 18. This Act becomes effective January 1, 1983.
15 However, payments under this Act shall only be made to victims
16 of criminal acts which are committed on or after January 1,
17 1984.

18 EXPLANATION

19 This bill provides a scheme for the compensation of innocent
20 victims of criminal acts and their dependents financed by
21 a victim compensation surcharge on persons convicted of public
22 offenses. The compensation scheme is tied to workers'
23 compensation benefits as provided in chapter 85 of the Code.
24 If the victim is not gainfully employed at the time of the
25 bodily injury or death the bill establishes benefits based
26 on the average monthly wage in Iowa as determined by the
27 director of job service. The maximum benefit award under
28 the bill is \$5,000 per claimant per criminal act or related
29 groups of criminal acts less a deductible amount of \$100
30 unless the claimant is 60 years of age or older or is
31 handicapped in which case the deductible shall not apply.

32 The industrial commissioner is the administrator of the
33 victim compensation scheme and is responsible for seeking
34 reimbursement from a person who has committed a criminal act
35 resulting in payments to or on behalf of a victim under the

1 compensation scheme.

2 The bill would be effective on January 1, 1983, but payments
3 under the bill would be to victims of criminal acts which
4 are committed on or after January 1, 1984.

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